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IN THE
Supreme Court of the United States

OCTOBER TERM, 1939.

No. [REDACTED] 51

IN THE MATTER OF JAMES M. WRIGHT, DEBTOR.

JAMES M. WRIGHT,
Petitioner-Appellant,

vs.

THE UNION CENTRAL LIFE INSURANCE COM-
PANY, WILLIAM D. REMMELL, TRUSTEE,
Respondents-Appellees.

**BRIEF FOR RESPONDENT-APPELLEE, THE UNION
CENTRAL LIFE INSURANCE COMPANY, IN OP-
POSITION TO PETITION FOR CERTIORARI.**

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JAMES M. WRIGHT,
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vs.

THE UNION CENTRAL LIFE INSURANCE COM-
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**BRIEF FOR RESPONDENT-APPELLEE, THE UNION
CENTRAL LIFE INSURANCE COMPANY, IN OP-
POSITION TO PETITION FOR CERTIORARI.**

STATEMENT.

The farm land involved herein is the 200 acre tract with respect to which this Court reversed the United States Circuit Court of Appeals (7th Circuit) in *Wright v. Union Central Life Insurance Co.*, 304 U. S. 502. 585 Ct. 556, 82 L. Ed. 1490. This Court held that the Bankruptcy Court acquired exclusive jurisdiction of the land and consequently it was required to be administered there.

Thereafter, and consistent with said holding, Respondent filed its petition in the Bankruptcy Court setting up in detail the history of the loan, the subsequent proceedings had and the facts establishing debtor's failure to comply with the terms of Section 75 (s) and orders entered pursuant thereto and his demonstrated inability to reinstate himself financially. The petition asked that, on the basis of such facts, this property be dismissed from the proceeding, or, in the alternative, it be sold at public auction as provided in the Act (Sub-sec. (s), par. 3):

Debtor then petitioned the Bankruptcy Court to dismiss Respondent's petition but same was denied by order entered September 22, 1938. *From this order no appeal was prayed or effected.* Debtor then filed an answer to the petition, largely denying the facts stated in the latter. Upon the issues thereby made an open court hearing was had in the Bankruptcy Court. Witnesses were heard on both sides, arguments were made and briefs filed. On February 11, 1939, the Bankruptcy Court made a number of specific Findings of Fact and in accordance therewith on the same date entered its decree ordering the property sold at public auction and allowing debtor ninety (90) days to redeem therefrom as provided in the Act. This order was affirmed by the Circuit Court of Appeals (*Wright v. Union Central Life Insurance Co.*, 108 F. (2d) 361), and Petitioner seeks a review of the judgment of that Court.

In view of debtor's erroneous assumption in the Court of Appeals and in his present petition that Respondent is still attempting to question the jurisdiction of the Bankruptcy Court, we again emphasize the following: When this Court, in its former opinion, held that the Bankruptcy Court had exclusive jurisdiction of this farm land, Respondent promptly accepted that holding as final and as the law of this case. By its petition Respondent

invoked the jurisdiction of the Bankruptcy Court. In so doing it could not and did not question that jurisdiction.

Debtor's petition herein fails to make clear another very pertinent fact. The order of sale by the Bankruptcy Court was entered on February 11, 1939—*more than three years after debtor's petition was filed under sub-section (s), as amended August 28, 1935.* Hence, at the time of the Court's findings and order of sale, debtor had enjoyed a full three-year moratorium under the Act—to say nothing of a "self-made" prior moratorium dating back to about 1930.

The substance of the Bankruptcy Court's Findings of Fact and of the record upon which its order of sale was predicated are detailed in the opinion of the Circuit Court of Appeals (108 F. (2d) -361) and a repetition thereof would serve no useful purpose.

The basic contentions advanced by the Petition for Certiorari appear to involve the following:

That the order of the Bankruptcy Court and its affirmance by the Court of Appeals are in conflict with the express terms of Section 75 (s), as amended, and the decisions of this Court in *John Hancock, Etc., Ins. Co. v. Bartels*, 308 U. S. 180, 84 L. Ed. 154, and *Kalb v. Feuerstein*, 308 U. S. 433, 84 L. Ed. 281.

We believe neither of these bases is sound, as we shall point out in Argument.

Analysis of Petitioner's Points.

The Petition for Certiorari and the brief in support thereof are too extended and too replete with reiteration to attempt categorical observations with respect to the detailed contentions advanced therein. Accordingly, we submit an analysis of same, with suggestions in answer thereto.

1. Petitioner's contention or assumption that Respondent raised a question as to the jurisdiction of the Bankruptcy Court in this proceeding has been answered in the above statement.

2. Petitioner urges that the Findings of Fact made by the Bankruptcy Court were not supported by sufficient evidence or were contrary thereto.

In the first place, ordinarily this Court will not try questions of fact in granting or refusing a petition for certiorari. Even when a petition is granted, adjudicated facts are seldom disturbed if established by the concurrent opinions of two courts below. They were so established in the instant case.

Secondly, Petitioner utterly fails to demonstrate where in the Findings were incorrect or improper. His statements with respect thereto are limited to argument and conclusions.

Thirdly, Findings of Fact by the District Court, who saw and heard the witnesses, are presumptively correct and will not be disturbed unless shown to be clearly wrong and without support of evidence.

Rule 52 (a) Rules of Civil Procedure, U. S. Sup. Ct.

United Shoe Machine Corp. v. U. S., 258 U. S. 451, 425 Ct. 363, 66 L. Ed. 708.

Cunningham v. Merchants Nat'l. Bank, 4 F. (2d) 25 (C. C. A. 1st).

Hagen v. Hawley, 86 F. (2d) 217, (C. C. A., D. C.) Cert. Den. 299 U. S. 613.

3. Petitioner contends that the Act of March 4, 1938 (11 U. S. C. A. 203 (s)) extended his moratorium to March 4, 1940 and that by Act of the present Congress same was further extended to 1944.

By the very terms of these Acts it is manifest that Congress did not intend or purport to extend moratoria effected by previous petitions under Section 75 (s). The extensions amended only sub-section (c) to enable farmer-debtors who had not filed petitions within the time originally limited to March 4, 1938, to seek relief under Section 75 at any time within the extended period. Petitioner can cite no holding of this or any other Court to support his contention. Further, if the latter were sound, the Act of June 22, 1938 (C. 575, 52 Stat. 840, 939), conditionally authorizing extension of existing moratoria to November 1, 1939, was unnecessary and meaningless.

Counsel for Petitioner urged this contention in his petitions for certiorari in *Lowman v. Federal Land Bank, etc.*, case No. 785, and in *Moon v. The Union Central Life Insurance Co.*, case No. 854, both at this Term. These petitions were denied, respectively, on April 1, 1940 and April 29, 1940. While it is recognized that the granting or denial of a petition for certiorari represents no adjudication upon the merits of the particular case, nevertheless the Court must have considered the above point in its denials of certiorari and this is certainly persuasive in the instant case which presents the same question.

4. Petitioner vehemently asserts that the Bankruptcy Court's Findings of Fact are insufficient to justify a sale

under the power given that Court by paragraph (3) of sub-section (s).

It is clear from the Findings of Fact, the substance of which appears in the opinion of the Circuit Court of Appeals,

(a) That Petitioner failed to comply with the provisions of the Act in that he *never* submitted an offer of extension or compromise (bona fide or otherwise);

(b) That he failed to pay a "reasonable rental" as required by the Act and

(c) That he displayed a contemptuous attitude toward the Court by announcing to the Trustee that he would deliver no crops (the fixed rental) until the determination of the case and if defeated he would never do so.

The rental was not only required to be paid by the terms of the Act but by the express order of the Bankruptcy Court made pursuant thereto. Hence, petitioner likewise failed to comply with the order of Court.

Petitioner attempted and attempts herein to excuse his retention of the crops to his own use and benefit and his defaults above stated by claiming to have used a portion of the proceeds of one year's crop to pay for roof repairs. Even if true, this only involved one year and ignores other periods. Also, the terms of the Act and the order of Court required the payment of rental "into Court". The Act provides the first application of rental so paid is for *taxes*. This was never done but Petitioner apparently felt that he was entitled to supplant the Bankruptcy Court, retain the rental and apply it as, when and where he chose.

Petitioner's assertion that Respondent waived the submission of an offer of composition or extension hardly warrants a reply. That is a requirement of the Act and was a matter between Petitioner and the Bankruptcy Court to which he had applied for relief. Respondent

could not and, in fact, did not attempt to act for the Court as to statutory requirements.

The further element authorizing a discretionary sale by the Bankruptcy Court under paragraph (3) was also present. The obvious impossibility of "financial rehabilitation" was demonstrated throughout and at the expiration of the three year period. This was established by the Court's Findings of Fact, is apparent from the recitals in the opinion of the Court of Appeals and cannot seriously be questioned.

Consequently, the discretionary authority of the Bankruptcy Court to order a public sale, as expressly provided in paragraph (3) of subsection (s) must be conceded.

In addition to the foregoing, the Court also found that a written demand for a public sale had been made by Respondent as a secured creditor having a lien on the property. A sale pursuant thereto is expressly directed by paragraph (3). We have in mind that the three year period had expired when the sale was ordered.

5. Probably the contention most seriously urged by Petitioner is that by Section 75 (s) he was intended to have and had an absolute right to "redeem" the farm property at its present appraised value and that this right could not be defeated by the provision for a public sale at which the secured creditor might bid without restriction as to amount. This provision he terms a "joker".

The answer to this contention is, primarily, two-fold. In the first place there is nothing in the Act to support it, expressly or inferentially and no Court has ever indicated or upheld it.

Secondly, and more to the point, the sale provisions of paragraph (3) of sub-section (s) were inserted by the amendment of August 28, 1935 with the express intention of avoiding one of the unconstitutional features of the

original Frazier-Lemke Amendment. (*Wright v. Vinton Branch etc. Bank*, 300 U. S. 440, 57 S. Ct. 1025, 82 L. Ed. 1490.) Respectfully, we draw attention to this Court's recitals of the Congressional debate when the amendment of August 28, 1935 was under consideration and the fact shown thereby, that a limitation on the bidding rights of the secured creditor was intentionally and expressly rejected before the Committee approved and submitted the Bill for passage.

This precise question was again before the House Judiciary Committee of the present Congress in its discussion of the amendment approved March 4, 1940. It was again proposed that the farmer-debtor be granted the right to regain title by payment of the appraised value. However, such provision was rejected, the Committee reporting against it on the ground of probable unconstitutionality under the decisions of this Court in the *Vinton Branch* case (300 U. S. 440), *Radford* case (295 U. S. 555) and the *Bartels* case (308 U. S. 180, 84 L. Ed. 154). Incidentally the *Bartels* case appears to be one of the authorities most relied on by Petitioner.

If, as Petitioner urges, the provisions for public sale in paragraph (3) constitute a "joker", Congress so provided after due consideration and this year has confirmed its previous decision. The Court will not deliberately read out of a statute a provision which Congress purposely inserted therein.

This was the second principal point advanced by counsel for Petitioner in the Lowman and Moon petitions for certiorari (*supra*) recently denied by this Court. Without fear of contradiction we can safely assert that counsel's reasons there were entirely in accord with those urged in the instant case.

In its Findings of Fact the Bankruptcy Court found the

present value of the farm property to be \$6,000.00. This was based upon debtor's own estimate. At that time the mortgage indebtedness was slightly less than \$16,000.00 and debtor complains that he should not be required to pay the higher figure for redemption but should be allowed to regain title and possession by payment of the present value. However, in the present petition debtor ignores the fact that there was no evidence that he could raise enough money to redeem even at that figure. It will be noted that this situation is expressly recited in the opinion of the Circuit Court of Appeals. Hence, there is no substance in debtor's complaint on the facts or law.

6. Throughout his petition and brief in support, Petitioner asserts that the order of the District Court and the opinion of the Circuit Court of Appeals were opposed to the holdings of this Court in the Bartels and Kalb cases, *supra*.

These cases are not even comparable. In the first place, both the Bartels and Kalb cases involved proceedings in State courts had after the Bankruptcy Court had acquired exclusive jurisdiction of the properties in question. The instant case involves the administrative action of the Bankruptcy Court exercised after this Court had decided that exclusive jurisdiction was in that Court and it should be administered there.

As far as the instant case is concerned the Bartels and Kalb decisions added nothing to the opinion of this Court in *Wright v. Union Central Life Insurance Co.*, *supra*. The holding there that the Bankruptcy Court acquired jurisdiction of the farm here involved indicated the propriety of the proceedings had thereafter in the Bankruptcy Court, which proceedings Petitioner now attacks herein.

The order appealed from was an order entered in due course of the administration of this property by the Bankruptcy Court. In so far as that order also may have involved any permission or validation of any action taken in the State court foreclosure, the authority for same was recognized in *Kalb v. Feuerstein*, *supra*, and in *Union Joint Stock Land Bank v. Byerly* (case No. 579) decided by this Court on April 22, 1940. However, the title claimed by Respondent is that acquired through sale in the Bankruptcy Court.

Conclusion.

It is respectfully submitted that Petitioner has demonstrated no ground for certiorari and his petition should be denied.

Respectfully submitted,

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